

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.190 of 1994

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1. Babu Saheb Hazari
 2. Ghina Hazari
 3. Nandkishore Hazari, all sons of Hardeo Hazari
 4. Bhulu Singh, s/o Baleshwar Singh, all resident of village- Birpur, P.S. Barauni (Birpur) District- Begusarai

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 278 of 1994

Ram Badan Hazari, son of Hardeo Hazari, resident of village- Birpur, Police Station- Barauni (Birpur), District- Begusarai

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Nilesh Kumar, Advocate
For the State	:	Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date : 14-10-2017

Both these appeals have been filed by the five appellants against the judgment of conviction and order of sentence dated 18.4.1994 passed by the 6th Additional Sessions Judge, Begusarai in Sessions Trial No. 177 of 1992 arising out of Barauni P.S. Case



No. 46 of 1992, G.R. No. 555 of 1992 whereby the appellant Rambadan Hazari was sentenced to undergo rigorous imprisonment for life under Section 302 IPC and to undergo rigorous imprisonment for seven years under Section 27 of the Arms Act and both the sentences were to run concurrently, appellant Babusaheb Hazari, Nand Kishore Hazari, Ghina Hazari and Bhullu Singh were sentenced to undergo rigorous imprisonment for life under Section 302/149 of the Indian Penal Code.

2. The prosecution case in brief is that about 15 days before the occurrence of this case accused Bina Hazari and Nandkishore Hazari had misbehaved with the passengers at Birpur Bus-stand for which there was a Panchayati. The informant Anirudh Hazari and his brother Balmiki Hazari (deceased) had opposed the accused Ghina Hazari and Nand Kishore Hazari in the said Panchayati. About 10-12 days before the occurrence the aforesaid two accused persons had fired at the informant but he had escaped. On 6.2.1992 at about quarter to 7'O clock the informant returned home after ease and at that time accused Rambadan Hazari, Babu Saheb Hazari, Nandkishore Hazari, Ghina Hazari and Bhullu Singh, all armed with pistol came to the house of the informant and called Balmilki Hazari, brother of the



informant. As soon as Balmiki Hazari came out of the house Rambadan Hazari fired at him which hit Balmiki Hazari in his chest and he fell down. The informant went to save his brother and then accused Babusaheb Hazari thrashed him on the ground and accused Nandkishore Hazari and Ghina Hazari caught him and accused Bhullu Singh fired at him which hit him on the right side and he started bleeding. On his raising alarm, Pratima devi, his wife, Arjun Hazri, sikandar Hazari and Ramsarowar Hazari and others came and then the accused persons fled away. Thereafter, said Arjun Hazari, Sikandar Hazari and Ramsweak Hazari and others took him and his brother for treatment to Sadar Hospital, Begusarai and in the way Balmiki hazari died. The informant was brought to the clinic of Dr. Ashok Kumar Sharma for treatment where his fardbeyan was recorded by S.I. K.Choudhary of Town Police Station on 6.2.1992 at 11.30 P.M. On the basis of the aforesaid fardbeyan formal FIR was drawn in this case.

3. The police after investigation submitted charge sheet against all the five appellants and after taking cognizance, charges were framed and the case was committed to the Court of Sessions and the appellants were put on trial.

4. During the course of trial the prosecution has examined altogether 11 witnesses and out of those 11 witnesses,



P.W. 11 is the Advocate Clerk, a formal witness who has proved the inquest report Ext. 5 and Ext. 6 which is writing and signature of Dr. S.N. Haque. P.W.9 is the Doctor of Sadar Hospital, tendered by the prosecution. P.W. 8 is Tayed and a formal witness who has proved the endorsement made by the officer-in-charge of Barau P.S. on the fardbeyan. P.W. 10 is the Dr. Shashibhushan Prasad who has conducted the post mortem of the deceased Balmiki Hazari. P.w. 7 is the I.O. of the case, P.W. 6 is the informant of the case, P.Ws. 1,2,4 and 5 are the witnesses of the alleged occurrence.

5. Mr. Ajay Kumar Thakur, appearing on behalf of the appellants has submitted that there is mystery behind recording of fardbeyan in the clinic of Dr. Ashok Kumar Sharma as the inquest report was prepared on 7.2.1992 at 6.00 AM at the Emergency ward of Sadar hospital, Begusarai, whereas the fardbeyan was recorded not at Sadar Hospital but at the clinic of Dr. Ashok Sharma at 11.30 PM. Referring to the deposition of the I.O. of this case Mr. Thakur has submitted that the IO has deposed before the court that on 6.2.1992 at 8.00 pm he received information that in village Birpur firing took place and as such he recorded Sanha Entry No. 92 of 1992 and rushed to the place of occurrence and when he reached Birpur village, he learnt that two people sustained injury and they have been taken to the Hospital at



Begusarai. When he rushed to the Sadar Hospital, Begusarai he learnt that both the injured were admitted to the clinic of Dr. Ashok Sharma. The informant has also stated that he reached the clinic of Dr. Ashok Sharma at 1.00 AM on 7.2.1992 where he met Kailash Choudhary, Sub-Inspector of Police, Begusarai Town Police Station who has recorded the statement of Anirudh Hazari, the informant, I.O. has claimed that he has recorded the statement of the informant of the case in the clinic of Dr. Ashok Sharma where he saw the dead body of the deceased, Balmiki Hazari and received the inquest report of the deceased prepared by the Sub-Inspector, Kailash Choudhary. In the same breath he stated that on the same night he again visited the place of occurrence at Birpur and examined the place of occurrence at 6.30 in the morning of 7.2.1993. Mr. Thakur referring to the said statement submitted that IO has accepted the receipt of information of commission of crime at 8.00 PM on 6.2.1992. He claimed that he visited the village and villager told about the fact that injured were taken to Sadar Hospital but he has not mentioned that any clue was given by the villagers that who has committed the crime. He has not explained the mystery of seeing the dead body of Balmiki Hazari in the clinic of Dr. Ashok Sharma and the inquest report prepared by Sub-Inspector Kailash Choudhary at Sadar Hospital. The inquest report



indicate that it was prepared at the emergency ward of Sadar Hospital on 7.2.1992 at 6 AM. This discrepancy in the statement of the I.O. and the inquest report has not been explained by the prosecution. The fardbeyan was recorded at 11.30 PM after the death of Balmiki Hazari and the informant has stated that his elder brother has died on the way to Sadar Hospital and in the inquest report prepared on 7.2.1992 at 6 AM then it is impossible that the IO has received the inquest written by Kailash Choudhary at 1 pm on 7.2.1992 when on record it prepared at 6 AM on 7.2.1992.

6. Mr. Thakur has drawn our attention to the deposition of P.W.7, IO of the case who has stated in para-7 that he reached the place of occurrence at about 10.30 of 6.2.1992 and learnt from the villagers about the fact that the victims have been taken to the Sadar Hospital but he has not mentioned in the case diary the name of the villagers. He has stated in his deposition that he has enquired from the villagers but no one disclosed the name of the accused. In para-7 he has stated that he did not reach the place of occurrence as there was no light. This statement also runs contrary to his statement that he visited the place of occurrence in his deposition. Referring to para-8 he stated that IO has admitted that neither cot, nor bed nor clothes of the deceased was seized. IO has stated that he has not seen blood either on the cot or on the bed but



he has seen blood on the body of the deceased. In para-9 he has stated that he reached the place of occurrence at 6.30 AM on 7.2.1992 but he did not find any cartridge, cot or bed at the place of occurrence. At one place he found blood but he has not found any sign of blood at the door of Ram Karan. In his deposition he has stated that he has neither prepared the seizure list of the blood found at the place of occurrence nor he has seized any blood from the place of occurrence as he has not thought it prudent to send the same for forensic examination. In para-10 the IO has stated that Sikandar, P.W. 1 has stated that Bhullu Singh has given Chura blow to the informant, P.W. 2 has not stated that accused assembled at the door of Balmiki Hazari or that he was at the time of incident at his door. He has also not stated that the accused persons were abusing Balmiki. I.O. has also stated that P.W. 2 has not stated that Rambadan Hazari had fired at Balmiki Hazari nor he has stated that accused persons have given Chura blow to Anirudh Hazari. He has stated that P.W. 4 has not stated before him that at the place of occurrence there was blood in the cot. I.O. has also stated that P.W. 2 has not shown any blood on the cot at the place of occurrence. IO has stated that P.W.5 has not shown him the blood stained clothes. PW-5 has not made any statement that he was present in his house at the time of occurrence. PW-5



has not stated that he came out of his house hearing hulla. PW-5 has also not stated that accused persons reached the house of the deceased abusing him. I.O. has mentioned in para-27 of the case diary that prior to the incident there was some altercation between Rambadan Hazari and Anirudh Hazari in connection with consuming toddy. He has stated in para-12 that in the north of the place of occurrence there is house of Janardan and in the east there is house of Bhula Singh but he has not recorded the statement of Janardan and Bhoja.

7. Mr. Thakur has stated that in fact in this case the prosecution has falsely implicated the appellants in a planned manner due to previous enmity. In the totality of the fact situation any reasonable man can come to a conclusion that the earlier version of the incident was suppressed and as an afterthought the name of the appellants were disclosed due to enmity. He submitted that in this case the informant was partly examined and later on he did not turn up for cross-examination and a certificate was filed that the informant was killed and as such his cross-examination was not done.

8. Mr. Thakur submitted that P.W. 4, Arjun Hazari is the uncle of the deceased. In para 3 he has stated that he informed the Choukidar and Dafadar and asked them to inform the police. He



has named the Choukidar but he has stated that he does not recollect the name of Dafadar. P.W. 2 in his deposition in para-4 has stated that his statement was not taken by the police during the investigation in the night of the occurrence. He has stated that in the night at about 12.00, the S.P. made enquiry from him and the SP along with Sub-Inspector of Police and constables was present at the place of occurrence. He has claimed that he has shown the SP the place of occurrence which is in front of his door where blood had fallen but he did not say whether the SP or the police officials picked up the blood or not. He has stated that in his presence the SP recorded the statement of his two brothers and as such except the aforesaid two there is no independent witnesses.

9. Mr. Thakur submitted that the earlier version of P.W. 2 and his two brothers has not been brought on record nor there is earlier statement supplied to the accused which is indicative of the fact that the prosecution has suppressed the earlier version and improved the version as an afterthought and introduced the appellants as assailants in this case. Mr. Thakur submitted that P.W.3 Brahmdeo Hazari in his deposition has stated that Sarbar Hazari has gone to the police for giving information immediately after 15-20 minutes of the occurrence. Mr. Thakur referring to the deposition of P.W. 5 has stated that according to this witness at



8.30 Daroga has recorded his statement as well as statement of the informant Anirudh Hazari, Arjun Hazari Sikandar Hazari. If the statement of P.W. 5 is taken into consideration then the police has recorded the statement of Anirudh Hazari, Sikandar Hazari and others in such situation the fardbeyan recorded at 11.30 P.M. is indicative of the fact that as a planned manner the prosecution has planted the story of involvement of these appellants in commission of the crime. If the police arrived at 08.30 and the statement of the informant and others was recorded there was absolutely no occasion for the informant to give fardbeyan at 11.30 P.M. this is indicative of the suppression of the earlier version of the prosecution.

10. Mr. Thakur has referred to the statement of P.W. 1 who is cousin of the deceased who has stated in para -6 that he along with Anirudh Hazari, the informant, Chandra Bhushan Hazari, Ram Sarobar Hazari, Most Fulo Devi, Pramila Devi, Chando Devi, Ramsarovar Devi and Navi Rasual of another community have assembled at the place of occurrence but Most. Fulo Devi, Pramila Devi, Chando Devi, Ramsarovar Devi who assembled at the place of occurrence immediately after the occurrence were not examined.



11. Mr. Thakur thereafter submitted that in this case the informant has claimed that he has sustained injury. In the fardbeyan he mentioned that Nand Kishore Hazari Ghina Hazari has caught hold him and Bhula Singh fired which caused injury on his right Panjara. In the instant case neither Dr. Ashok Sharma who had examined P.W. 6 the informant of the case was examined nor any injury report was placed on record.

12. P.W.9 who has been examined in this case is Dr. Ashok Kumar Verma, Medical Officer, Sadar Hospital, Begusarai who was tendered by the prosecution . There is nothing on the record to show that P.W. 6 has sustained any injury caused by fire arm as claimed by the informant in his fardbeyan. One injury report relied by prosecution shows that the informant has received injury by sharp cutting substance and not fire arm which is indicative of the fact that the statement of the informant about the injury sustained by him was a false statement which is not supported by any injury report nor Dr. A.K.Sharma was examined to prove the case of injury on the informant.

13. Mr. Thakur submitted that in this case the prosecution has made pick and choose of the witnesses and suppressed the material facts from the Court. In addition to the suppression of the earlier version of the occurrence of time, non-examination of material



witnesses like Dr. Ashok Kumar Sharma in the instant case creates serious doubt about the prosecution case. He submitted that in the instant case the informant was not available for cross-examination and as such prosecution has suffered prejudice.

14. Mr. Thakur referring to the deposition of P.W. 7 has stated that P.W. 7 has admitted that due to non-availability of the electricity he could not examine the place of occurrence but quarter to 7 PM when the instant crime took place there is no statement as to how any one has seen particulars of the incident and what was the sources of their identification is not placed by the prosecution.

15. Mr. Thakur, referring to the deposition of P.Ws. 2 and 3 has submitted that witnesses have admitted that there was a title suit pending between Ram Baran Hazari, the appellant and a criminal case was also filed by Ram Baran Hazari against the informant side. In such a situation when previous enmity is admitted the chance of false implication is most probable. This aspect was totally ignored by the trial court.

16. Mr. Thakur then submitted about non-examination of the independent witnesses as P.W. 1 has stated that 15-16 people assembled at the place of occurrence but none of them were examined. He also referred to the serious lapse of the investigation



in the matter of investigation of use of vehicle for transportation of the injured to the hospital. Neither the owner of the vehicle was examined nor details as to the vehicle was obtained by the I.O.

17. Mr. Thakur referring to the aforesaid infirmity submitted that the prosecution has not been able to bring home the charges beyond all reasonable doubt rather the lacuna in the investigation and non-examination of the material witnesses, pick and choose of the witnesses, contradictory version of the IO about the time of occurrence and material indicative of the suppression of the earlier version and enough material to create doubt about the manner of commission of the crime was totally ignored by the Trial Court. He submitted that when two views are possible one about false implication and the other commission of crime, the court has to adopt a view which indicates false implication.

18. Learned Additional Public Prosecutor appearing on behalf of the State has submitted that the trial court has rightly convicted the appellants on appreciation of the deposition of the witnesses and there is no infirmity in the judgment.

19. We have given our conscious consideration to the submissions advanced by learned counsel for the appellants and after going through the records of this case we find substance in the submission of the appellant that there are major contradiction



in the version of the prosecution. We find that P.W. 1 in his deposition has stated that Bhulo Singh has given Chura blow to the informant. No one has stated that informant received fire arm injury from Bhulo Singh. P.W. 1 has stated that Babusaheb Hazsari has thrashed the informant when he intended to save Balmiki Hazari (deceased) Whereas P.W 3 says that Nand Kishore Hajari Babusaheb Hazari has thrashed him. P.W. 4 has stated in para-1 of his deposition that Bhulu Singh has thrown the informant down and thereafter he was inflicted Chura blow. P.W. 5 has stated that Babusaheb Hazsari intercepted and Anirudh thrown him and thereafter Ghina Hazari and Nand Kishore Hazari caught hold the informant and Bhulu Singh has given Chura blow on the informant. Thus we find the witnesses are at variance about the manner of injury caused to the informant including the informant himself who claimed that he received gun shot injury. Non-examination of Dr. Ashok Kumar Sharma and non-submission of the injury report by the said Dr. Ashok Kumar Sharma creates serious doubt about the manner prosecution claimed the commission of the occurrence. We also find major discrepancies in the statement of the witnesses about the earliest version of the commission of the crime and involvement of these appellants in the commission of the crime. We are in agreement with the



submission of Mr. Thakur that inquest report was prepared at 6.00 AM on 7.2.1994 at emergency ward of Sadar Hospital then how the IO claimed that he received inquest report at 1.00 P.M. on 7.2.1994 and once the deceased died on way to the Sadar Hospital, then there is no explanation how IO has seen the dead body of the deceased in the clinic of Dr. Ashok Kumar Sharma.

20. We find substance in the submission of Mr. Thakur that in this case when the occurrence took place at 6.45 PM and the IO received information at 8.00 PM, the delay in recording the fardbeyan and that too at the clinic of Dr. Ashok Kumar Sharma, creates serious doubt about improvement of the case and implication of these accused as assailant on account of previous enmity which is admitted by the witnesses during their examination in Court. The other infirmity pointed out by Mr. Thakur to indicate that earlier version was suppressed by the prosecution, appears to be logical and sound. We are also of the view that in the instant case, prosecution has made a pick and choose and the independent witnesses who could have unfolded true narrative of the incident have been withheld. In this case we find that witnesses have been confronted with the suggestion that the deceased and the informant was of criminal background and



were eliminated by unknown and as an afterthought the informant implicated the accused appellants in the instant case due to enmity.

21. The cumulative effect of the aforesaid facts and circumstances creates serious doubt about the involvement of the appellants in this case . It is true that enmity cut both ways, it may be reasons for commission of crime, but at the same time, it may be a factor for false implication. In the attending fact situation we are of the view that the prosecution has failed to explain the major contradiction, the manner of commission of crime, failure of the I.O. in conducting investigation on scientific line, non-examination of independent material witnesses and pick and choose of the witnesses are the strong indication of the suppression of earlier version of the incident and non-disclosure of the name of the appellants at the very first instance either by the independent witnesses or even by the prosecution side including the prosecution witnesses, P.W. 4 and the deposition of P.Ws. 2 and 5 that the earlier version was recorded by the S.P. and the Daroga and non-production of these version in the instant case creates serious doubt about the manner in which the crime was committed and the appellants were roped in this case as such we are of the view that the conviction of the appellant in such a situation is unsustainable.



22. Accordingly, we allow these two appeals extending the benefit of doubt to the appellants for the reasons stated above and set aside the judgment of conviction and order of sentence. The appellants are thus discharged of their liabilities of bail bonds.

(Rajendra Menon, CJ)

spandey/-

(Anil Kumar Upadhyay, J)

AFR/NAFR	NAFR
CAV DATE	NA
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